FEDERAL POLICY UPDATE

AMERICAN SENIORS HOUSING ASSOCIATION
Living Longer Better

September 9, 2016

» CONGRESS RETURNS FROM RECESS TO UNFINISHED BUSINESS

The primary business awaiting Congress's return from the summer recess this week is passage of a bill to fund the federal government for the fiscal year that begins on October 1st. At this point, Congressional leaders will almost certainly have to settle for passing a short-term Continuing Resolution (CR) to keep the government open until after the election. It remains to be seen whether that extension will extend into next year or will be left to a November lame duck session, but the latter seems more likely at this point. Work on the CR is likely to dominate the September session and crowd out other matters, but there have been some discussions about working on a bipartisan tax package in a year-end bill. Provisions of such a bill could include technical corrections to previously enacted tax bills as well as a package of noncontroversial tax proposals. As discussed below, ASHA continues to meet with key members and staff to advocate for the extension of the medical expense deduction for seniors which could be included in such a tax bill.

We are continuing to monitor regulatory activity and have noted below recent actions that have been taken by the Internal Revenue Service (IRS), the Centers for Medicare and Medicaid Services (CMS), and the Federal Housing Finance Agency (FHFA). We are also monitoring the 2016 campaigns for discussions on issues of interest to the housing industry, particularly as they relate to seniors housing. We have briefly noted some of the issues addressed by the major party Presidential candidates below.

» HEALTH CARE

ASHA Continues Building Support for Seniors Tax Hike Prevention Act

House Majority Leader Kevin McCarthy (R-CA) has announced that the full House will vote in September on a Ways and Means Committee reported bill (H.R. 3590) that would repeal the Affordable Care Act provision that increased the threshold for the deduction of medical expenses to 10% of income from 7.5% of income. ASHA has supported that bill, which is expected to pass the House. As we previously reported, Senators Rob Portman (R-OH) and Sherrod Brown (D-OH) have introduced more targeted legislation in the Senate that is also supported by ASHA. The Portman/Brown bill would extend for two years (2017 and 2018) the expiring 7.5% income threshold for purposes of the medical expense deduction for taxpayers age 65 and over. Although a major tax bill will not be enacted this year, it is, as noted above, still possible that a package of relatively modest bipartisan proposals could be considered this year. Because the special seniors' medical expense deduction is time-sensitive and is especially important to senior housing residents and their families, ASHA is continuing to meet with members of Congress and their staffs to build support for any legislation that would keep the 7.5% threshold rule in place.

Senate Aging Committee Leadership Urges More Clarity from CMS on HCBS Rule

On September 6, 2016, the leadership of the Senate Special Committee on Aging sent a letter to the Centers for Medicare and Medicaid Service's (CMS) expressing concern over the implementation of the Home and Community Based Services (HCBS) regulations issued by the agency in March of 2014. Senator Susan Collins, Chair (R-ME) and Senator McCaskill (D-MO), Ranking Member, highlighted the lack of guidance from CMS regarding the criteria for determining whether a setting would be eligible to serve Medicaid beneficiaries. Areas they cited as requiring additional clarification include secured memory care units, assisted living communities in rural areas and communities located adjacent to an institutional setting such as a nursing home or hospital. Absent clear guidance, the Senators are concerned that assisted living communities will no longer be eligible for the HCBS program and residents will have little or no options for their care and residency. These are the same concerns expressed in a letter to the CMS by the Centers for Excellence in Assisted Living (CEAL), of which ASHA is a board member.

Click here to read the Senate Letter and CEAL Letter.

Centers for Medicare and Medicaid Services (CMS) Memorandum on Privacy of Nursing Home Residents and Social Media Abuse

On August 5th, the CMS issued a Survey and Certification memorandum to state health officials on protecting resident privacy and prohibiting abuse-related photographs and recordings by nursing home staff. This action follows recent news articles reporting on inappropriate social media postings of residents by nursing home workers. The memorandum instructs state survey agencies to begin requesting and reviewing nursing home policies and procedures related to prohibiting nursing home staff from taking or using photographs or recordings in any manner that would demean or humiliate a resident. In addition, state survey agencies are instructed to investigate and report any on-site instances of noncompliance with federal requirements related to the inappropriate use of social media.

The CMS memorandum also discusses the responsibilities of nursing homes in ensuring abuse protections for residents and outlines federal requirements. The memorandum states that each nursing home must have policies and procedures in place that prohibit all forms of abuse, including mental abuse, and ensure that staff training on such policies is provided to all staff who provide care and services to residents. In addition, nursing home management must report all allegations of abuse, ensure such abuses are investigated, and implement appropriate corrective actions.

Although the CMS memorandum specifically targets nursing homes, it could have broader implications and is worth reviewing carefully.

» HOUSING

ASHA Joins others in the Real Estate Community to Inform Presidential Candidate Clinton of Importance of the Like-Kind Exchange Rules

As a member of the Real Estate Like-Kind Exchange Coalition, ASHA joined in sending a letter to Hillary Clinton that emphasizes the importance of the like-kind exchange rules with respect to real estate. The letter was in response to reports indicating her campaign is actively considering repealing or imposing limits on section 1031 exchanges to offset the revenue costs of other policy initiatives. Our letter explained that like-kind exchanges are a powerful tool that accelerates domestic investment and broad-based job growth. The Coalition has already contacted the Clinton policy staff and will monitor further activities on this issue.

FHFA Increases Multifamily Lending Caps

On August 18th, the Federal Housing Finance Agency (FHFA) announced it made an additional increase to the 2016 multifamily lending caps for Fannie Mae and Freddie Mac, raising the caps from $35 billion to $36.5 billion for each Enterprise, effective immediately. In its 2016 Scorecard released in December 2015, FHFA committed to review the estimates of the overall size of the multifamily finance market each quarter and to increase the caps if warranted. FHFA determined that such an increase was justified in order to maintain the presence of the Enterprises as a backstop for the multifamily finance market. The Agency also reconfirmed that loans in certain affordable and underserved market segments will continue to be excluded from the purchase caps.

» TAX

IRS Proposes Regulations to Curb Valuation Discount Rules for Estate Tax Purposes

In early August, the IRS proposed regulations that are designed to restrict the application of valuation discounts to interests in closely-held businesses or other entities for purposes of estate, gift, and generation-skipping transfer taxes. Specifically, the proposed regulations address the treatment of certain lapsing voting or liquidation rights and other restrictions on liquidations in determining the value of transferred interests. According to a Department of Treasury blog posting, the regulations are neccessary to prevent hte undervaluation of such interests.

Estate tax practitioners have noted the significance of the regulations on estate planning and have particularly highlighted the creation of a new class of restrictions that will be disregarded when valuating gifts or bequests to family members of interests in family-controlled entities.

A public hearing on the proposed regulations is scheduled for December 1st. ASHA will continue to monitor this issue.

ASHA Partners with Motion Picture Licensing Corporation (MPLC) and Secures Member Discount on Umbrella License

ASHA recently negotiated an agreement with the MPLC that gives ASHA members the opportunity to obtain a reduced-rate license to exhibit movies and other audiovisual programs in senior living communities in a copyright compliant manner. Other leading industry associations including Argentum, LeadingAge, American Health Care Association/National Council for Assisted Living (AHCA/NCAL), and the National Association of Activity Professionals (NAAP) have also entered into this new agreement. The 2016 Agreement educates our members on the need for copyright compliance when motion pictures and other audio-visual programs are shown in senior living and health care communities. Additionally, all associations have collectively negotiated a special introductory discount of almost 40% for qualifying members that secure an Umbrella License before December 31, 2016.

ASHA strongly encourages you to secure an Umbrella License prior to December 31, 2016 to ensure the lowest possible license fee. Contact MPLC directly at (800) 462-8855 or online at mplc.org for assistance with pricing and any questions about the 2016 Agreement and the Umbrella License.

Click for copy of full article, the brochure and Umbrella License terms of agreement.

» PRESIDENTIAL CANDIDATES' POLICY PROPOSALS

While there has been a great deal of press coverage of the Presidential race, we thought it might be worthwhile to briefly outline what the Presidential candidates from the two major parties have said on some of the issues that we have covered in recent updates.

Taxes

Mr. Trump recently announced a revised tax plan that would reduce the number of individual income tax brackets from seven to three: 12%, 25%, and 33%. As has been widely reported, his proposals are very short on detail and continue to evolve. He has, however, said that he would treat carried interest as ordinary income; eliminate the alternative minimum tax and the estate tax; and tax capital gains and dividends at a maximum rate of 20%. Mr. Trump has proposed a top corporate tax rate of 15% and would apply that same rate to pass-through entities (although his economic advisors have indicated there may be tweaks to the later provision to ensure it is used for "legitimate businesses"). In addition, he appears to support proposals that allow for immediate expensing of business expenses.

Mrs. Clinton's proposals are more detailed. She would leave the tax rates and brackets unchanged, but would impose a 4% surtax on adjusted gross income over $5 million; a phased-in minimum tax of 30% of AGI on taxpayers with AGI greater than $1 million (the "Buffet rule"); and significant estate tax increases. She would treat carried interest as ordinary income. With respect to capital gains and dividends, Mrs. Clinton would tax assets held less than two years at ordinary rates, reducing the rate roughly four percentage points for each additional year an asset is held, until a minimum 23.8% top rate is reached on assets held more than six years. Mrs. Clinton also proposes to limit the tax benefit of most itemized deductions and certain exclusions to 28% for taxpayers in the 33% and higher brackets.

Mrs. Clinton has proposed new tax credits for individuals, including a 20% tax credit to help family members offset up to $6,000 in caregiving costs for their elderly family members and a refundable tax credit of up to 5% for out-of-pocket health care costs exceeding 5% of income. In addition, she calls for a credit toward Social Security benefits for workers when they are out of the paid workforce because they are acting as caregivers.

Housing

Mr. Trump has vowed to cut regulations that are hurting the housing recovery. In a recent speech, he commented on the current low homeownership rate, which he attributed to overregulation of the industry. He has also noted the lack of mortgage credit and the negative impact that the current regulatory environment has on mortgage lending.

Mrs. Clinton has announced an economic revitalization initiative that includes a $25 billion housing program that targets economically distressed communities. Among other things, she has proposed offering down payment assistance, clarifying lending rules, and building more affordable rental housing. In addition, she has pledged to work closely with regulators to make sure that Fannie Mae, Freddie Mac, and the nation's lenders "meet their responsibility to provide lending in communities that have been historically underserved."

Regulations

Mr. Trump has described government regulation as a "stealth tax," and has said he will issue a temporary moratorium on new agency regulations upon taking office. He also has said he will require each federal agency to prepare a list of all of the regulations it imposes on American businesses, and rank them from most critical to health and safety to least critical. He said the least critical regulations will receive priority consideration for repeal. Mr. Trump specifically advocated rolling back President's Obama's overtime regulation during a recent interview and called it one of the many regulations that need to be addressed to get small business owners thriving again and to increase access to capital. He has also promised to lessen banking regulations to make borrowing easier.

Mrs. Clinton has not addressed the subject of regulations specifically, but she is expected to continue many of President Obama's regulatory policies. For example, her campaign released a video in 2015 attacking the Republican candidates for seeking to roll back the President's policies. In addition, she made specific statements supporting regulations issued by the Administration, including the Consumer Financial Protection Bureau's proposal to ban mandatory arbitration clauses in financial products, the Department of Labor's fiduciary rule, and the Department of Labor's overtime rule.

Alzheimer's Research and Treatment

Mr. Trump has not released a proposal addressing Alzheimer's disease research. However, during a campaign rally, he called Alzheimer's a "total top priority for me" in response to a question.

Mrs. Clinton has proposed increasing funding for Alzheimer's research to $2 billion annually, the level leading researchers have determined is needed to treat Alzheimer's and make a cure possible by 2025.

GENERAL ELECTION DEBATE SCHEDULE

Monday, September 26 | First Presidential Debate | Moderator: Lester Holt

Sunday, October 9 | Second Presidential Debate | Moderators: Cooper Anderson and Martha Raddatz

Wednesday, October 19 | Third Presidential Debate | Moderator: Chris Wallace

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